IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1087 of 1979

with

FIRST APPEAL No 302 of 1980

with

First Appeal No. 32 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

First Appeal No. 1087 of 1979

UNITED INDIA INSURANCE CO.LTD.

Versus

KASHIBEN ALIAS SHANTABEN WD/O PARSHOTTAMDAS H PARMAR

Appearance

MR MI PATEL for Petitioner

MR HASHIM QURESHI for Respondent No. 1

FIRST APPEAL No 302 of 1980

SHANTABEN WD/O PRABHATSINH SHANABHAI

Versus

DIPSINH BHALSINH SOLANKI

Appearance:

MR HASHIM QURESHI for Petitioners

MR MI PATEL for Respondent No. 1, 2, 3

Mr. Hashim Qureshi for respondent no.4

FIRST APPEAL No 32 of 1981

KASHIBEN SHANTABEN WIFE OF PARSHOTTAMDAS HATHIBHAI PARMAR

VERSUS

DIPSINH BHALSINH SOLANKI

Appearance

MR A. HAMEED KURESHI for Petitioners

MR MI PATEL for Respondent no.1

NOTICE SERVED for Respondent No. 4

CORAM : MR.JUSTICE R.K.ABICHANDANI

and MR.JUSTICEC.K.BUCH

Date of decision: 03/02/99

ORAL JUDGEMENT (R.K.Abichandani.J)

These three appeals arise from the same award and have been argued by the learned counsel for both the sides together and are being disposed of by this common judgment.

#. First Appeal No. 1087 of 1979 of 1981 is filed by the Insurance Company against the judgment and award made in M.A.C.P. No. 247 of 1978 on 2.5.79 by the Motor Accidents Claims Tribunal, Nadiad awarding a sum of Rs. 1,26,500/- with running interest at 6 percent per annum to the claimants as against their claim of Rs. 1,50,000/-. First Appeal No. 32 of 1981 is filed by the original claimants of M.A.C.P. No. 247 of 1978 against the award to the extent that their claim for the remaining amount of Rs. 23,500/- was disallowed and also against the decision of the Tribunal rejecting their claim so far as the respondents nos 1,2 3 are concerned. In other words, the appellants have pressed their entire claim against the truck driver, truck owner and the insurance company in its capacity as the insurer of the truck in question.

#. First Appeal No. 302 of 1980 has been preferred by the original claimants of M.A.C.P. No. 248 of 1978 against the Tribunal's order dismissing their petition.

#. The two claim petitions were consolidated and the evidence recorded by the Tribunal is common. The accident took place on 1.1.1978 when Parbhatsinh Shanabhai Parmar PSI was driving his motor bike with Parsottamdas Hathibhai, Sr. Clerk of the G.E.B. along with him as a pillion rider for going to Kaprupur from Uttarsanda. It is alleged that while they were near the village Khadol, truck No. GTG 864 driven by Dhiposinh Bhalsinh Solanki came from the opposite direction at an excessive speed and ran over the motor bike causing injuries to both the persons who died in that accident. According to the claimants of MACP No. 247 of 1978, deceased Parsottamdas Hathibhai was getting a salary of Rs. 1000/- per month and on that basis, they claimed Rs. 1,50,000/- by way of damages. The claimants who were dependents of PSI Prabhatsinh Shanabhai claimed Rs. 1,25,000/- by way of damages on the footing that he was drawing salary of Rs. 700/- per month at the relevant time.

#. The claims were opposed on the ground that the accident was not caused due to the negligence of the truck driver and that PSI was himself negligent in driving his motor bike. The claims were also opposed on the ground that they were exaggerated.

#. On the question of negligence, the Tribunal came to a finding on issue no.1 of both the claim petitions that the accident was caused due to the negligence of the driver of the motor bike PSI Prabhatsinh and the truck driver was not at all responsible for the accident. On this basis MACP No. 248 of 1978 which was filed by the dependents of PSI Parbatsinh was dismissed and in MACP No. 247 of 1978, while dismissing the petition against the driver and owner of the truck and the insurance company which was also impleaded in its capacity as insurer of the truck made an award against the same insurance company in its capacity as insurer of the motor bike for a sum of Rs. 1,26,500/-.

#. It has been contended on behalf of the insurance company that the accident had occurred due to the negligence of the motor bike driver. Reliance was placed on the panchnama exh. 27 in support of this contention. It was submitted that the drag marks on the road showed that the motor truck had stopped after the impact caused

by the motor bike which had come on its wrong side. It was also contended that the amount awarded by the Tribunal was excessive and that there was no reliable evidence adduced in respect of the income of the deceased Parsottamdas. As regards the finding given by the Tribunal in respect of the income of PSI Prabhatsinh it was submitted that the amount worked out by the Tribunal on hypothetical basis, being what it would have awarded had the truck driver been found guilty of negligence, was unrealistic. It was also contended that the policy did not cover the risk of the pillion rider.

#. The learned counsel appearing for the claimants in MACP No.302 of 1980 contended that the evidence on record pointed to the fact that the truck driver was negligent and that there was no negligence on the part of the driver of the motor bike. He too relied upon the panchnama besides the deposition of the conductor and other evidence. It was submitted that reliable evidence was led as regards the income of PSI Prabhatsinh. The learned counsel submitted in respect of First Appeal No. 32 of 1981 that the Tribunal ought to have held the respondents nos 1,2 and 3 of that appeal liable on the ground that the truck driver was negligent and ought to have awarded the remaining amount of Rs. 23,500/-.

#. There is no dispute about the fact that the driver and the pillion rider of the motor bike both died as a result of the accident in which the motor bike was crushed beneath the truck which was loaded with cement bags while it was proceeding at a speed of more than 50 kms. per hour. In this regard there is evidence of Babarbhai Shankerbhai who has deposed at exh.34. He was the conductor in the said truck at the time when the accident took place. He has stated that they were proceeding from Sevalia to Kheda and the truck was being driven at 50 kms. per hour at that time. The motor bike was seen coming from the opposite direction with these two persons on it. He has reiterated that the truck was going at full speed. He has stated that the driver of the truck applied the brakes but the brakes were not properly functioning and hence the vehicle could not be stopped. He further stated that as the brakes were not in proper order, the truck swerved towards the incorrect side and dashed against the motor bike as a result of which the motor bike was dragged upto a distance of 50 ft. He has stated that both the persons who were on the motor bike died. From the deposition of this witness, it is clear that the driver was not in a position to control his truck and when the motor truck had swerved on its wrong side of the road,it collided with the motor bike.

The panchnama shows that the motor bike was totally crushed and was found beneath the truck. The truck, even as per the panchnama is shown to have halted on its wrong side near the northern edge of the east-west road. It is not the case of this conductor who was travelling in the truck that the accident was caused due to the bursting of the tyre of the truck which story has found favour with the Tribunal. It is only in his cross-examination that a suggestion was made that the right wheel of the truck was burst when the motor bike dashed against it. But that does not conflict with his version in his examination in chief that the truck driver who was going at a high speed could not stop the truck and that on his applying the brake it had swerved on the incorrect side of the road and dashed against the motor bike. The chronology of events in his examination in chief indicates that the truck had dashed against the motor bike which was dragged for about 50 ft. which shows that the truck driver was driving at a speed at which he could not control his truck even after the impact. From the nature of impact and the spot at which the truck ultimately halted, as it transpires from the deposition of the conductor and the panchnama of the place of incident, we are fully satisfied that the accident had taken place because of the driving of the truck driver and that there is no negligence whatsoever on the part of the rider of the motor bike. The story that the motor bike had first dashed against the right wheel of the truck and it resulted into bursting of tyre is developed by the truck driver in his cross examination before the Tribunal. In the FIR which was lodged by him copy of which is at exh.26 it was only mentioned by him that the motor bike coming from the opposite direction had come under his truck and both the persons who were on the motor bike were crushed under his truck and died. It was stated that when he tried to stop his truck, the tyre of the front wheel of the truck was burst. There is no mention in the FIR that the accident was caused because of bursting of the tyre. In his deposition he has stated that he had seen the motor bike coming from the opposite direction. While driving a heavy vehicle it was his duty to have slowed down to bring his truck to a manageable speed. In his deposition he further stated that the motor bike skidded and dashed against his right front mud guard but there is no such allegation, about the motor bike having skidded, made in the FIR which was given by him. The truck driver in his deposition exh.60 admitted that as he lost control over his vehicle, his truck had stopped on the incorrect side of the road. In his cross examination he has also stated that due to the collision the tyre of his truck had burst and therefore, the

accident took place which in our opinion, is a sheer concoction. The positive nature of the above evidence clearly points to his negligence. In our opinion therefore, the finding on issue no.1 in both the claim petitions on the question of negligence reached by the Tribunal is contrary to the evidence on record and we hold that the accident had taken place due to the rash and negligent driving of the truck driver and that there was no negligence on the part of the driver of motor the bike.

#. There is positive evidence to show that Prabhatsinh was driving the motor bike for over 8 years and therefore, even if he was having a learner's licence that would hardly make any difference and negligence of Prabhatsinh cannot be spelt out from the fact that he was having a learner's licence. It was his experience of driving motor bike for nearly 10 years that counts and not the fact that he continued to have only a learner's licence. It is clear that he had purchased the motor bike in the year 1976 and was driving the same for nearly ten years and therefore, we are not prepared to attribute any negligence to him on the ground that he was having a learner's licence.

##. Now coming to the quantum issue as regards MACP No. 247 of 1978, we find that there is reliable evidence of the widow of Parsottamdas at exh.30 showing that he was earning Rs. 1000/- per month while serving with the GEB as a Senior Clerk. Yusufkhan Ahmedkhan Pathan, the Head Clerk of GEB in his deposition at exh.31 has also deposed that the deceased was drawing Rs. 926.40 p.m. inclusive of allowances, in the pay scale of Rs. 460-875, when he passed away. It further shows that he would have been promoted as Establishment Superintendent in the pay scale of Rs. 675-1100. On this basis, the Tribunal worked out the dependency benefits at Rs. 675/p.m. and having regard to the fact that he was 40 years of age and would have retired at 58, applying the multiple of 15 arrived at the figure of Rs. 1,21,500/- for loss of dependency benefit and adding a further sum of Rs. 5000/for loss of expectation of life awarded a total amount of Rs. 1,26,500/- to the claimants. We find that the compensation is worked out on a rational basis and cannot be said to be excessive in any manner.

##. In First Appeal No. 32 of 1981 the learned counsel for the appellants had sought permission to delete appellants nos 4 and 5 who according to him are no more. In that appeal, since we have come to the conclusion that

the accident had taken place because of the negligence of the truck driver, the order of the Tribunal dismissing the claim against the respondents nos 1,2 and 3 cannot be sustained and relief will now be available to the applicants against the other respondents which include the same insurance company which had also insured the truck under the policy number mentioned in the claim application which fact was not disputed. As regards the additional claim of Rs. 23,500/we do not find any valid reason to enhance the award already made by the Tribunal.

##. As regards the quantum of compensation in MACP No. 248 of 1978 the Tribunal has held that if it had found that the accident had taken place because of the negligence of the truck driver, then it would have held the owner of the truck driver as well as the insurance company that had insured the truck to be liable to pay compensation of Rs.1,13,000/-. This amount was reached on the basis of evidence which showed that the PSI Prabatsinh was earning Rs. 700/- p.m. at that time and if he was promoted, he would have been placed in the pay scale of Rs.550-1200. Witness P.I. Shri Bhatt in his deposition at exh. 57 has stated that Parsottamdas was an efficient and promising officer. He has stated that there were avenues of promotion upto the post of DSP. On the basis of evidence as to the income of Parbatsinh and his future prospectus the average income of Parbatsinh was worked out at Rs. 900/- p.m. and after deducting 1/3rd from the said amount, the dependency benefit was worked out at Rs. 600/- p.m. Since he was 42 years of age, multiplier of 15 was applied and the dependency benefit was worked out at Rs. 1,08,000/- to which Rs. 5000/- were added for expectation of life. We find that the Tribunal has arrived at this figure on the basis of evidence as to the income of the deceased and future prospects. In our opinion, since the negligence of the truck driver has been established, all the respondents of MACP No. 302 of 1980 are jointly and severally liable to pay the said amount to the claimants who will be entitled to receive it in equal shares. In that First Appeal learned counsel had sought permission to delete the appellants nos 6 and 7, who according to him are no more.

##. In view of what we have held above, we make the following order in these appeals:-

(A) So far as the First Appeal Nos. 1087 of 1979 and 32 of 1981 which arise from the award in MACP No. 247 of 1978 are concerned, we dismiss the First Appeal No. 1087 of 1979 with costs. Since the appellant was also the insurer of the truck- the offending vehicle, we partly allow First Appeal No. 32 of 1981 against the respondent nos 1,2 and 3 being the truck driver, the owner of the truck and the said insurance company which had also insured the offending truck. We dismiss the First Appeal No. 32 of 1981 so far as the claim for higher amount is concerned. There shall be no order as to costs in that appeal.

(B) First Appeal No. 302 of 1980 is allowed setting aside the order dismissing the claim petition and we order that the respondents of that appeal will pay a sum of Rs. 1,13,000/- to the appellants with running interest at the rate of 6 percent per annum from the date of the application till realisation of the amount with proportionate costs. The amount will be divisible amongst these appellants in equal shares.

(C) The award to be drawn accordingly in these appeals in respect of the claim petitions Nos. 247 of 1978 and 248 of 1978.

(D) We direct that from the amount awarded, one half will be payable in equal shares to the appellants and the remaining amount will be deposited in equal shares in their names in Fixed Deposit for a duration of two years and after that period, the amount will be paid to the respective appellants. We do not find any valid reason for keeping this amount in deposit for a longer period because the claim is an old one made in the year 1978.